

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK VICINAGE

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Irvin Morales,	:	
	:	Civ. Action No.: 15-5311 (SRC)
	:	
Petitioner,	:	
	:	
v.	:	<u>MEMORANDUM AND ORDER</u>
	:	
Warden, New Hampshire State	:	
Prison, and Attorney General,	:	
State of New Jersey,	:	
	:	
Respondents.	:	

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This matter comes before the Court upon Petitioner's filing of a habeas petition pursuant to 28 U.S.C. § 2254. [ECF No. 1.] The petition is subject to review under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which directs the Court to promptly examine the petition and if it plainly appears that petitioner is not entitled to relief in the district court, dismiss the petition.

Petitioner seeks to challenge his February 3, 2006 judgment of conviction for felony murder imposed in the Superior Court of New Jersey, Sussex County, Law Division. (ECF No. 1, ¶ 1.) It appears that although Petitioner is serving his New Jersey sentence, he is housed in an out-of-state facility.<sup>1</sup> Therefore,

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<sup>1</sup> See New Jersey Department of Corrections, Offender Search,

both the warden of the facility having custody over Petitioner and the Attorney General of the State of New Jersey are named respondents.

Petitioner acknowledges that his petition is a mixed petition. (ECF No. 1-7.) A district court cannot address the claims in a mixed petition. See Rose v. Lundy, 455 U.S. 509, 510 (1982) (holding district court must dismiss a § 2254 habeas petition containing exhausted and unexhausted claims); Rhines v. Weber, 544 U.S. 269, 277-78 (2005) (district court has discretion to stay and hold in abeyance a mixed § 2254 habeas petition, allowing petitioner to return to state court to exhaust the unexhausted claims). Petitioner requests a stay and abeyance of this habeas proceeding so he can exhaust his state court remedies on his unexhausted claims. (ECF No. 1-7.)

It also appears that the habeas petition may be barred by the one-year statute of limitations. See 28 U.S.C. § 2244(d). The Court, therefore, will order a limited answer from Respondents, addressing only the statute of limitations and the motion for a stay and abeyance of the mixed habeas petition.

IT IS therefore on this 19<sup>th</sup> day of August,  
2015

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available at  
[https://www20.state.nj.us/DOC\\_Inmate/inmatefinder?i=I](https://www20.state.nj.us/DOC_Inmate/inmatefinder?i=I)

ORDERED that the Clerk of the Court shall serve a copy of the Petition, with all attachments [ECF No. 1], and this Order upon Respondents by regular mail, with all costs of service advanced by the United States; and it is further


ORDERED that Respondents shall file a limited answer to the petition, addressing only the issues of the statute of limitations and Petitioner's motion for a stay and abeyance of his mixed petition; and it is further

ORDERED that Respondents shall include relevant legal arguments with citations to appropriate legal authority; and it is further

ORDERED that Respondents shall electronically file the answer; and it is further

ORDERED that Petitioner may file and serve a reply to the answer within 30 days after Respondents file the answer, see Rule 5(e) of the Rules Governing § 2254 Cases; and it is further

ORDERED that the Clerk of the Court shall serve this Order on Petitioner by regular mail.



**Stanley R. Chesler**  
**United States District Judge**